

MIRANT COMMUNITY MONITORING GROUP

MEETING

September 29, 2011, 5:30 pm – 7:00 pm
City Hall – Conference Room #1101

AGENDA

- | | |
|-------------|--|
| 5:30 – 5:40 | Welcome and Introductions |
| 5:40 – 5:50 | Introductory Remarks – Co-Chairs (Council Members Del Pepper and Paul Smedberg) |
| 5:50 – 6:20 | Overview of City/GenOn Agreement to Permanently Retire GenOn Potomac River Generating Station – Christopher Spera, Deputy City Attorney |
| 6:20 – 6:45 | Future Planning for the GenOn Site – Faroll Hamer, Director, Planning and Zoning Department |
| 6:45 – 7:00 | Updates – Bill Skrabak, Deputy Director, T&ES Department <ul style="list-style-type: none">• NOV• Pepco Proposed Consent Order• Air Quality Monitoring |
| 7:00 | Adjourn |

AMENDMENT TO PROJECT SCHEDULE AND AGREEMENT

This Amendment to Project Schedule and Agreement (this "Amendment") is entered into between GenOn Potomac River, LLC ("GenOn") and the City of Alexandria, Virginia (the "City"), acting through its duly elected officials or designated employees, and establishes a process and mutual obligations that the parties agree to undertake with respect to the retirement of GenOn's Potomac River Generating Station (the "Facility"). This Amendment shall be effective on the date that both GenOn and the City have executed and delivered this Amendment (the "Effective Date").

WHEREAS, GenOn and the City entered into that certain Project Schedule and Agreement (as amended from time to time, the "Agreement") dated July 17, 2008;

WHEREAS, pursuant to the Agreement GenOn deposited thirty-four million dollars (\$34,000,000.00) in an interest bearing escrow account ("Escrow Account") pursuant to the terms of an escrow agreement (the "Escrow Agreement") between GenOn and Deutsche Bank Trust Company Americas (the "Escrow Agent") for the purpose of implementing air pollution control technology to reduce stack and fugitive particulate matter emissions from the Facility (the "Project");

WHEREAS, the City desires that GenOn cease operation of and retire the Facility;

WHEREAS, GenOn represents that, as of the Effective Date of this Agreement, it has not had any discussions or contemplated transferring the Facility to any entity for the purpose of coal-fired generation once the Facility has been retired by GenOn;

WHEREAS, the City agrees that upon retirement of the Facility, all remaining funds in the Escrow Account will be disposed of in accordance with this Amendment;

WHEREAS, the parties desire to amend the Agreement to reflect that GenOn and the City will no longer pursue the Project and GenOn will pursue retirement of the Facility in exchange for return of the remaining funds in the Escrow Account.

NOW THEREFORE, the parties agree as follows:

1. The foregoing recitals are incorporated into and made a part of this Amendment as though they are fully set forth in this Section 1 and constitute the representations, findings and understandings of GenOn and the City.
2. Capitalized terms used herein and not defined shall have the meaning given them in the Agreement.
3. For the purposes of this Amendment, the Facility shall be "Retired" and "Retirement" of the Facility shall have occurred when the Facility is permanently removed from service, as evidenced by a written notification from GenOn to PJM Interconnection, LLC ("PJM") that the Facility is permanently retired.

4. GenOn agrees to Retire the Facility on October 1, 2012 subject to PJM finding that the Facility is no longer needed for reliability as of the date of Retirement and obtaining other required approvals and consents (collectively, the "Consents").
5. Within 30 days after the Effective Date, GenOn shall seek all Consents.
6. If the Consents have been received by July 3, 2012, GenOn will retire the Facility on October 1, 2012. If the Consents have not been received by July 3, 2012, GenOn will retire the Facility within 90 days after receipt of all Consents. The parties acknowledge that the date on which the Facility is Retired could be delayed by issuance of an order by a federal or state agency requiring the Facility to remain available for a longer period of time than intended by the parties (a "Government Order"). In the event that a Government Order is issued, GenOn shall not be required to Retire the Facility until the Government Order is terminated or expired.
7. The City and GenOn shall cooperate and coordinate with each other to obtain the Consents.
8. Upon Retirement of the Facility, all funds in the Escrow Account shall be distributed to GenOn, provided, in the event that the Facility is Retired after January 1, 2014, \$750,000 shall be paid to the City, and the remaining funds in the Escrow Account shall be paid to GenOn.
9. All payments for goods and services properly procured under the Agreement prior to the Effective Date shall be paid from the Escrow Account. No other funds shall be disbursed from the Escrow Account other than (a) in accordance with this Amendment and (b) as required to compensate the Escrow Agent pursuant to the Escrow Agreement.
10. The City and GenOn acknowledge that as of the Effective Date, each party has complied in all respects with its obligations under the Agreement. All rights and obligations of GenOn and the City under the Agreement to expend funds for any purpose are terminated on the Effective Date. The City shall terminate the engagement of the Engineer on the Effective Date.
11. Sections 2-21 and 23-25 of the Agreement are hereby terminated, including, without limitation, all obligations to implement the Project.
12. Section 22 of the Agreement is hereby amended to state in its entirety:

"The City recognizes that this Agreement and the Retirement of the Facility is intended to satisfy pending disputes regarding previous operations at, and emissions and impacts from, the Facility and that GenOn's adherence to this Agreement shall resolve these disputes. The City agrees not to take any action to hinder the Retirement of the Facility and acknowledges that it does not have any right to direct any aspect of the Retirement process. The City does not release or waive any claims relating to the future compliance by GenOn or the Facility with federal, state or local laws, but agrees that the Retirement of the Facility will not alter the Facility's non-complying use status. While reserving the right to monitor the Facility's operations and to enforce the terms of this Agreement, the City will not initiate any judicial, administrative or other actions against GenOn for its activities in furtherance of and

compliance with this Agreement.”

13. Section 26 of the Agreement is hereby amended to state in its entirety:

“This Agreement shall terminate upon the Retirement of the Facility, except with respect to Sections 7, 9, 14, 17, 18 and 19 of this Amendment, and Section 22, 26-30 of the Agreement, which shall survive termination of this Agreement.”

14. Section 27 of the Agreement is hereby amended by deleting telecopy as a valid manner of service notice, and by changing the address for notice to GenOn to the following:

If to GenOn:

GenOn Potomac River, LLC
Attn: General Counsel
1000 Main Street
Houston, Texas 77002

With a copy to:

GenOn Potomac River, LLC
Attn: Vice President Asset Management, Eastern PJM
601 13th Street, N.W.
Suite 850 North
Washington D.C. 20005

15. For a period of five years beginning on the date of Retirement, the City will collectively value the land, buildings, machinery, and equipment at the Facility site for taxation purposes only as unimproved land for so long as the plant is non-operational and the land is not the subject of any redevelopment application filed with the City, and such five year period may be renewed upon agreement of the City and GenOn. During this time, the buildings, machines and equipment will have a zero valuation for tax assessment purposes.
16. The City and GenOn shall, prior to issuance, consult with one another and provide each other a reasonable opportunity to review and make reasonable comment upon any press release and public statement with respect to this Amendment or the Retirement of the Facility and, except as may be required by applicable law or any listing agreement with the New York Stock Exchange, will not issue any such press release or public statement prior to such consultation.
17. This Amendment amends the Agreement only to the extent and in the manner herein set forth. All references in the Agreement to the Agreement shall mean the Agreement as amended by this Amendment. In all other respects, the terms and conditions of the Agreement shall remain in full force and effect.
18. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

19. This Amendment shall be governed by the laws of the Commonwealth of Virginia, without regard to its principles of conflict of laws.

20. This Amendment will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in one or more counterpart signature pages as of the Effective Date.

CITY OF ALEXANDRIA, VIRGINIA

Date: 8-29-11

By: [Signature]
Title: City Manager

Approved as to form:

[Signature]
City Attorney

APPROVED AS TO FORM:

[Signature]
DEPUTY CITY ATTORNEY

GENON POTOMAC RIVER, LLC

Date: 8-29-11

By: [Signature]
Title: President

FUTURE DEACTIVATIONS
(as of September 27, 2011)

Unit	Capacity	Trans Zone	Age (Years)	Official Owner Request	Requested Deactivation Date	Projected Deactivation Date	PJM Reliability Status ¹
Hunlock 3	45	UGI	48	1/16/2008	6/1/2010	6/1/2010	Unit being re-powered under interconnection project T117. Cap rights re-used.
Hudson 1	383	PS	39	9/8/2004	12/7/2004	12/7/2011	PJM has determined that Hudson 1 is no longer needed for reliability purposes effective December 7, 2011.
Benning 15	275	PEP	39	2/28/2007	5/31/2012	5/31/2012	Reliability issues identified and expected to be resolved by 5/31/2012
Benning 16	275	PEP	35	2/28/2007	5/31/2012	5/31/2012	Reliability issues identified and expected to be resolved by 5/31/2012
Buzzard Point East Banks 1, 2, 4-8	112	PEP	39	2/28/2007	5/31/2012	5/31/2012	Reliability issues identified and expected to be resolved by 5/31/2012
Buzzard Point West Banks 1-8	128	PEP	39	2/28/2007	5/31/2012	5/31/2012	Reliability issues identified and expected to be resolved by 5/31/2012
Cromby 2	201	PE	54	12/2/2009	5/31/2011	12/31/2011	Reliability analysis complete - Reliability impacts identified - Results posted
Eddystone 2	308	PE	49	12/2/2009	5/31/2011	5/31/2012	Reliability analysis complete - Reliability impacts identified - Results posted
Kearny 10	122	PSEG	39	4/22/2009	6/1/2012	6/1/2012	Reliability analysis underway - along with potential transfer of capacity rights to new interconnection project(s)
Kearny 11	128	PSEG	40	4/22/2009	6/1/2012	6/1/2012	Reliability analysis underway - along with potential transfer of capacity rights to new interconnection project(s)
Kearny9	21	PSEG	43	4/21/2010	6/1/2013	6/1/2013	Reliability analysis underway - along with potential transfer of capacity rights to new interconnection project(s)
Cromby Diesel	2.7	PECO	43	5/27/2010	5/31/2011	5/31/2011	Reliability analysis complete - no impacts identified
Ingenco Petersburg Plant	2.9	DOM	20	7/16/2010	5/31/2013	5/31/2013	Reliability analysis complete - no impacts identified
Indian River 3	169.7	DPL	40	8/13/2010	12/31/2013	12/31/2013	Reliability analysis complete - reliability impacts identified and expected to be resolved before unit is deactivated
Sporn 5	440	AEP	49	10/1/2010	12/31/2010	10/1/2011	Reliability analysis complete - no impacts identified
State Line 3	197	ComEd	55	4/28/2011 8/25/11	6/1/2014 4/1/2012	6/1/2014 4/1/2012	Reliability analysis complete - no impacts identified past proposed deactivation date. Need to complete previously identified baseline upgrade by June 2014. On 8/25/11 State Line requested a revised deactivation date of 4/1/2012. Reliability analysis being performed for this new date.
State Line 4	318	ComEd	49	4/28/2011 8/25/11	6/1/2014 4/1/2012	6/1/2014 4/1/2012	Reliability analysis complete - no impacts identified past proposed deactivation date. Need to complete previously identified baseline upgrade by June 2014. On 8/25/11 State Line requested a revised deactivation date of 4/1/2012. Reliability analysis being performed for this new date.
Vineland 10	23	AE	41	6/13/2011	9/1/2012	9/1/2012	Reliability Analysis complete - no impacts for deactivation Sept. 2012. Previously identified baseline upgrade needs to be completed as scheduled (summer 2012).
Viking Energy NUG IPP	16	PPL	21	7/5/2011	3/1/2012	3/1/2012	Reliability Analysis complete - no impacts identified
Polomac River 1-5	482	PEP	82	8/30/2011	10/1/2012	10/1/2012	Reliability Analysis underway
TOTAL:	3650.3						

Note (1): PJM Reliability Status column also contains links to additional information for requests with reliability issues posted to the PJM website.



COMMONWEALTH of VIRGINIA

Douglas W. Domenich,
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

David K. Paylor
Director
Thomas A. Faha
Regional Director

August 30, 2011

CERTIFIED MAIL
Return Receipt Requested

Mr. Mark Gouveia
Vice President/PJM South
GenOn Potomac River, LLC
25100 Chalk Point Road
Aguaso, Maryland 20608

NOTICE OF VIOLATION

RE: GenOn Potomac River, LLC, Registration No. 70228

Dear Mr. Gouveia:

This letter notifies you of information upon which the Department of Environmental Quality ("Department" or "DEQ") may rely in order to institute an administrative or judicial enforcement action. Based on this information, DEQ has reason to believe that GenOn Potomac River, LLC may be in violation of the Air Pollution Control Law and Regulations.

This letter addresses conditions at the facility named above, and also cites compliance requirements of the Air Pollution Control Law and Regulations. Pursuant to Va. Code § 10.1-1309(A)(vi), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.* The Department requests that you respond **within 10 Business days of the date of this letter.**

OBSERVATIONS AND LEGAL REQUIREMENTS

On July 12, 2011, DEQ staff conducted an on-site inspection as part of a Full Compliance Evaluation (FCE) of GenOn Potomac River, LLC, (GenOn) which entailed evaluating the facility for compliance with the facility's current Virginia State Stationary Source Permit to Operate dated July 31, 2008 (Permit), and all applicable state and federal air regulations. Documents and required record keeping necessary for review to complete the FCE were also provided by facility personnel. All documents, required record keeping, and information

provided in correspondence from the facility was certified by the facility's responsible official by the Document Certification Form received by DEQ-NRO on August 16, 2011. The following describes DEQ staff observations and identifies applicable legal requirements.

I. Observation: During the on-site inspection conducted on July 12, 2011, an observation of the load out chute area of the bottom ash silo was conducted. It was observed by DEQ staff and confirmed by facility personnel that a water fogging system for the control of fugitive particulate emissions was not installed in this location. In subsequent electronic correspondence dated July 13, 2011 and July 19, 2011, it was reaffirmed by facility personnel that the bottom ash silo is not equipped with a water fogging system within the partially enclosed load out chute area.

Legal Requirements:

In accordance with 9 VAC 5-80-850, Condition 10. of the facility's Stationary Source Permit to Operate dated July 31, 2008 (Permit*) states,

"Particulate Matter (PM) Emission Controls - Fugitive particulate emissions from fly ash and bottom ash transfer from the ash silos to trucks or rail cars shall be controlled by full or partial enclosure, wet suppression within the loading chute, and water fogging within the enclosure. The full or partial enclosure system shall be provided with adequate access for inspection and shall be utilized whenever fly ash and bottom ash transfer from the silos to trucks or rail cars is occurring. The use of rail cars for transporting ash requires the use of fugitive emissions controls that are equivalent to those used by trucks. Should alternate fugitive particulate control strategies be developed in the future, the permittee shall submit the applicable portions of a Form 7 application, or written equivalent."

9 VAC 5-40-20(E) states,

"At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source."

II. Observation: On July 29, 2011, DEQ staff requested that the facility submit the 30-day rolling averages for NO_x (lbs/MMBtu) for Combined Stack 4 (CS4, a.k.a. MS4) for the time period of July 11, 2011 through July 29, 2011. On August 3, 2011, DEQ-NRO received the 30-day rolling averages for NO_x (lbs/MMBtu) for CS4 for the time period

of April 1, 2011 through July 29, 2011. The data received on August 3, 2011 appeared to be calculated in a manner not approved by the Regional Air Compliance Manager of the DEQ's NRO.

Legal Requirement:

In accordance with 9 VAC 5-40-890, Condition 40. of the facility's Stationary Source Permit to Operate dated July 31, 2008 (Permit) states,*

"On-Site Records - The permittee shall maintain records of emission data and operating parameters as necessary to demonstrate compliance with this permit. The content, format and accessibility of such records shall be arranged with the Regional Air Compliance Manager of the DEQ's NRO at the address in Condition 18. These records shall include, but are not limited to:

d. All recorded CEMS and COMS data necessary to demonstrate compliance with the requirements of Conditions 36 and 37 and with the emission limits in Conditions 28 and 29."

III. Observation: On July 11, 2011, DEQ staff submitted an electronic request to the facility to prepare documents and required record keeping necessary for review to complete the FFY2011 FCE. On July 15, 2011, DEQ-NRO received the requested items which included the calculated data for the 30-day rolling average for Oxides of Nitrogen (NOx) (lbs/MMBtu) for the time period of September 1, 2010 through July 11, 2011 for Combined Stack 4 (CS4). The data appeared to indicate that the facility exceeded the limit specified by the permit. On July 21, 2011, DEQ staff sent electronic correspondence to facility personnel requesting that the data be reviewed and confirmed. On July 21, 2011, the facility reported that the facility exceeded the NOx 30-day rolling average (lbs/MMBtu) specified by the permit for CS4 on June 28, 2011; July 12, 2011; July 13, 2011; July 14, 2011; July 17, 2011; and July 18, 2011. On August 3, 2011, DEQ-NRO received the daily and 30-day rolling averages for NOx (lbs/MMBtu) and hours of operation for CS4 for the time period of April 1, 2011 through July 29, 2011. DEQ calculations of the 30-day rolling average for NOx (lbs/MMBtu) on CS4 based on this data indicated that the facility exceeded the limit specified by the permit for six distinct 30-day periods.

III. (i.) Observation: DEQ calculations of the 30-day rolling average for NOx (lbs/MMBtu) on CS4 appear to indicate that on June 28, 2011 the preceding 30-day rolling average was 0.28 lb/MMBtu based on the daily average NOx rate submitted by the facility.

III. (ii.) Observation: DEQ calculations of the 30-day rolling average for NOx (lbs/MMBtu) on CS4 appear to indicate that on July 12, 2011 the preceding 30-day rolling average was 0.28 lb/MMBtu based on the daily average NOx rate submitted by the facility.

III. (iii.) Observation: DEQ calculations of the 30-day rolling average for NOx (lbs/MMBtu) on CS4 appear to indicate that on July 13, 2011 the preceding 30-day rolling average was 0.28 lb/MMBtu based on the daily average NOx rate submitted by the facility.

III. (iv.) Observation: DEQ calculations of the 30-day rolling average for NOx (lbs/MMBtu) on CS4 appear to indicate that on July 14, 2011 the preceding 30-day rolling average was 0.28 lb/MMBtu based on the daily average NOx rate submitted by the facility.

III. (v.) Observation: DEQ calculations of the 30-day rolling average for NOx (lbs/MMBtu) on CS4 appear to indicate that on July 17, 2011 the preceding 30-day rolling average was 0.28 lb/MMBtu based on the daily average NOx rate submitted by the facility.

III. (vi.) Observation: DEQ calculations of the 30-day rolling average for NOx (lbs/MMBtu) on CS4 appear to indicate that on July 18, 2011 the preceding 30-day rolling average was 0.28 lb/MMBtu based on the daily average NOx rate submitted by the facility.

Legal Requirements:

In accordance with 9 VAC 5-80-850, Condition 28. of the facility's Stationary Source Permit to Operate dated July 31, 2008 (Permit*) states,

Process Emission Limits - Emissions from MS1 and MS4 shall not exceed the limits specified below:

Pollutant	Emission rate	
	Merged Stack 1 (MS1)	Merged Stack 4 (MS4)
Oxides of Nitrogen (as NO ₂) (30-day rolling average) (Note 3)	0.35 lb/MMBtu 666.24 lbs/hr	0.27 lb/MMBtu 1,039.04 lbs/hr

9 VAC 5-40-20(E) states,

“At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.”

*9 VAC 5-170-160 (A) – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part:

“The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise

specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits."

**Va. Code § 10.1-1322 (A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.*

ENFORCEMENT AUTHORITY

Va. Code § 10.1-1316 of the Air Pollution Control Law provides for an injunction for any violation of the Air Pollution Control Law, the Air Board regulations, an order, or permit condition, and provides for a civil penalty up to \$32,500 per day of each violation of the Air Pollution Control Law, regulation, order, or permit condition. In addition, Va. Code §§ 10.1-1307 and 10.1-1309 authorizes the Air Pollution Control Board to issue orders to any person to comply with the Air Pollution Control Law and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the Air Pollution Control Law and regulations, and to impose a civil penalty of not more than \$10,000. Va. Code §§ 10.1-1320 and 10.1-1309.1 provide for other additional penalties.

The Court has the inherent authority to enforce its injunction, and is authorized to award the Commonwealth its attorneys' fees and costs.

FUTURE ACTIONS

DEQ staff wishes to discuss all aspects of their observations with you, including any actions needed to ensure compliance with state law and regulations, any relevant or related measures you plan to take or have taken, and a schedule, as needed, for further activities. In addition, please advise us if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In order to avoid adversarial enforcement proceedings, GenOn Potomac River, LLC may be asked to enter into a Consent Order with the Department to formalize a plan and schedule of corrective action and to settle any outstanding issues regarding this matter, including the assessment of civil charges.

In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. If you complete the Process for Early Dispute Resolution and are not satisfied with the resolution, you may request in writing that DEQ take all necessary steps to issue a case decision where appropriate. For further information on the Process for Early Dispute Resolution, please visit the Department's website under "Laws & Regulations" and "DEQ regulations" at: [http://www.deq.virginia.gov/regulations/pdf/Process for Early Dispute Resolution 8260532.pdf](http://www.deq.virginia.gov/regulations/pdf/Process%20for%20Early%20Dispute%20Resolution%208260532.pdf) or ask the DEQ contact listed below.

Please contact Ms. Sarah Baker, Regional Enforcement Manager, at (703)583-3850 or by e-mail at Sarah.Baker@deq.virginia.gov **within 10 Business days of the date of this letter** to discuss this matter and arrange a meeting.

Sincerely,

W. Allen H. H. Alaska for

R. David Hartshorn
Regional Air Compliance Manager

Cc: Charles Oliver - GenOn Potomac River, LLC
David Cramer - GenOn Mid-Atlantic
David Ciotti - GenOn Potomac River, LLC
Tom Faha - DEQ-NRO
Sarah Baker - DEQ-NRO
Terry Darton - DEQ-NRO
James LaFratta - DEQ-NRO
Justin Wilkinson - DEQ-NRO
Jerome Brooks - DEQ-CO
Craig Nicol - DEQ-CO

GENERAL NOTICES/ERRATA

VIRGINIA EMPLOYMENT COMMISSION

Small Business Impact Review

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Employment Commission will review 16VAC5-10 through 16VAC5-80, the regulations and general rules affecting unemployment compensation, to determine whether the regulations should be continued without change, amended, or repealed, consistent with stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. The deadline for public comment is October 12, 2011.

Contact Information: Coleman Walsh, Chief Administrative Law Judge, Virginia Employment Commission, 703 East Main Street, Room 126, Richmond, VA 22219, telephone (804) 786-7263, FAX (804) 786-9034, or email coleman.walsh@vec.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Dr. Lawrence V.

Phillips

An enforcement action has been proposed for Dr. Lawrence V. Phillips for violations of the State Water Control Law and Regulations in Loudoun County associated with the Highlands Development. The consent order describes a settlement to resolve violations of the State Water Control Law and Regulations. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 13, 2011, through October 13, 2011.

Proposed Consent Order for Potomac Electric Power Company

An enforcement action has been proposed for Potomac Electric Power Company for violations of State Water Control Law and Regulations, resulting from an oil discharge to state waters and land at the Potomac Electric Power Company substation located at 1300 K N. Royal Street, in Alexandria, Virginia. The consent order describes a settlement to resolve these violations. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901

Crown Court, Woodbridge, VA 22193, from September 13, 2011, through October 13, 2011.

Proposed Consent Order for Shrine Mont, Inc.

An enforcement action has been proposed for Shrine Mont, Inc. for violations in Shenandoah County. A proposed consent order describes a settlement to resolve permit effluent limitation violations at its STP. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email at steven.hetrick@deq.virginia.gov, FAX (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from September 12, 2011, to October 12, 2011.

Proposed State Implementation Plan Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit relevant portions of the amended regulations to EPA as revisions to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulations of the board affected by this action are as follows: Emission Standards for Municipal Solid Waste Landfills, Article 43 of 9VAC5-40, Existing Stationary Sources; Environmental Protection Agency Standards of Performance for New Stationary Sources, Article 5 of 9VAC5-50, New and Modified Stationary Sources; and Regulation for Open Burning, 9VAC5-130.

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: August 15, 2011, to September 14, 2011.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

Douglas W. Domenach
Secretary of Natural Resources

13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3821
www.deq.virginia.gov

David K. Paylor
Director

Thomas A. Faha
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO POTOMAC ELECTRIC POWER COMPANY

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Potomac Electric Power Company, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Containment and cleanup" means abatement, containment, removal, and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Location" means the facility, land, road, storm drain(s) or state water(s) where the oil discharge occurred located at 1300 K N. Royal Street, in Alexandria, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. See Va. Code §62.1-44.34:14.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Pepco" means Potomac Electric Power Company a corporation authorized to do business in Virginia. Pepco is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Site" means the facility, land, road, storm drain(s) and surface water(s) adversely affected by the oil discharge.
12. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses Discharge of Oil Into Waters.
13. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. On January 23, 2011, DEQ-NRO was notified of a discharge of non-PCB mineral oil from Pepco substation transformer number 9, located at the Location. Mineral Oil is included in the definition of "oil" under Va. Code § 62.1-44.34:14.
2. On January 24, 2011, DEQ staff conducted an inspection of the Site and observed that mineral oil had been discharged to land adjacent to the secondary containment wall of the transformer. DEQ staff also observed that a storm drain system, was affected with the

discharged mineral oil. DEQ staff also noted that mineral oil had discharged to the Potomac River.

7. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems.
8. On March 15, 2011 the Department issued Notice of Violation No. W2011-03-N-001 to Pepco for a discharge of oil to state lands and storm drain systems.
9. On March 21, 2011 and April 20, 2011 Pepco submitted incident reports for the mineral oil discharge to DEQ. Pepco informed DEQ that approximately 4,500 gallons of mineral oil was discharged to the environment. Pepco identified that the cause of this oil discharge was due to the failure of a press-fitted flange located between the cooler pump and transformer tank.
11. On April 25, 2011, Department staff met with representatives of Pepco to discuss the incident, discharge, emergency response, containment and clean-up, and future actions.
12. Based on the results of the January 24, 2011 inspections, the incident reports submitted to DEQ on March 21, 2011, and April 20, 2011, and the April 25, 2011 meeting, the State Water Control Board concludes that Pepco has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of mineral oil into or upon state waters, lands, or storm drain systems, as described in paragraphs C1 through C9 above.
13. Based on information contained in incident reports submitted to DEQ on March 21, 2011, and April 20, 2011, information received by DEQ at the April 25, 2011 meeting, and measures that have already been implemented to prevent a future discharge, DEQ has determined that no further action is necessary to remediate the mineral oil discharge.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders Pepco, and Pepco agrees to:

1. Pay a civil charge of \$38,565.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.
2. Reimburse DEQ for investigative cost of \$771.80 within 30 days of the effective date of the Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Pepco shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Pepco for good cause shown by Pepco, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Pepco admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law contained in this Order.
4. Pepco consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Pepco declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Pepco to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

8. Pepco shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Pepco shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Pepco shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Pepco intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Pepco. Nevertheless, Pepco agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. Pepco petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Pepco.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Pepco from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Pepco and approved by the Department pursuant to this Order are incorporated into this Order. Any

non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Pepco certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Pepco to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Pepco.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Pepco voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2011.

Thomas A. Fahs, NRO Regional Director
Department of Environmental Quality

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Potomac Electric Power Company voluntarily agrees to the issuance of this Order.

Date: 8/11/11 By: Susan H. Power, Deputy General Counsel
(Person) (Title)

District of Columbia
~~Commonwealth of Virginia~~

City/County of _____

The foregoing document was signed and acknowledged before me this 11th day of August, 2011, by Susan H. Power who is Deputy General Counsel of Potomac Electric Power Company on behalf of the corporation.

[Signature]
Notary Public

Registration No.

My commission expires: 8/14/14

Notary seal:

Lisa M. Brannock
Notary Public, District of Columbia
My Commission Expires 8/14/2014

